



## INTERIOR BOARD OF INDIAN APPEALS

Thurston County Board of Supervisors v. Aberdeen Area Director,  
Bureau of Indian Affairs

33 IBIA 154 (02/05/1999)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

THURSTON COUNTY BOARD OF	:	Order Affirming Decision
SUPERVISORS,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 98-115-A
	:	
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 5, 1999

Appellant Thurston County Board of Supervisors seeks review of a June 1, 1998, decision of the Aberdeen Area Director, Bureau of Indian Affairs, concerning taking certain property within the exterior boundaries of the Winnebago Reservation into trust for the Winnebago Tribe of Nebraska. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant's Notice of Appeal, which was filed by its Chairman, merely stated the intention to appeal. Appellant was advised of its right to file a brief and of its responsibility to show the error in the decision from which it was appealing. Although the Thurston County Attorney subsequently entered an appearance in this case, no brief was filed.

The Board has consistently held that an appellant who fails to make any allegation concerning how an Area Director's decision is in error, let alone any argument in support of such an allegation, has not carried its burden of proof. See, e.g., OK Tank Trucks, Inc. v. Acting Muskogee Area Director, 33 IBIA 119 (1999), and cases cited therein. Appellant has not carried its burden of proof here.

The Board notes that the October 21, 1997, decision issued in this matter by the Superintendent, Winnebago Agency, BIA, considered the factors listed in 25 C.F.R. § 151.10; and that the Area Director's June 1, 1998, decision addressed the issues which Appellant raised in appealing from the Superintendent's decision. As the Board has frequently stated, a decision on whether or not to take land into trust is discretionary. In reviewing discretionary decisions, the Board does not substitute its judgment for BIA's. Instead, the Board reviews such decisions "to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations." City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 196, 96 I.D.

328, 330 (1989). See also McAlpine v. United States, 112 F.3d 1429 (10th Cir. 1997); City of Lincoln City, Oregon v. Portland Area Director, 33 IBIA 102 (1999); Village of Ruidoso, New Mexico v. Albuquerque Area Director, 32 IBIA 130 (1998). It appears that BIA properly considered the factors in 25 C.F.R. § 151.10 in reaching its decision.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's June 1, 1998, decision is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge